INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statutes involved	2
Statement	2
1. The federal tobacco classification and identification program	3
2. The Georgia tobacco identification program	8
3. The proceedings in the district court	10
Summary of argument	12
Argument	15
The classification and identification provisions of the Georgia Tobacco Identification Act invade a field preempted by the federal Tobacco Inspection Act and conflict with the federal statute and implementing regulations	15
A. The purpose of the federal Tobacco Inspection Act is to provide a system of uniform national standards for the classification of tobacco, of inspection and classification by an impartial federal inspector, and a means of identification of that classification	16
B. The standards and regulations promulgated under the federal Tobacco Inspection Act create for tobacco auction markets a comprehensive system of federal tobacco classification and identification based on characteristics of tobacco and not on geographic origin	20
C. The classification and identification provisions of the Georgia Tobacco Identification Act lie in the same field as, and are in conflict with, the classification and identification provisions of the federal Tobacco Inspection Act	25

616823—61——1

Argument—Continued Page

D. Since the classification and identification provisions of the Georgia Act regulate the same fields as the federal Tobacco Inspection Act, and conflict with the regulatory scheme established under that Act, they are invalid. 27

Conclusion 33

Appendix 34

CITATIONS

Cases:

American Tobacco Co. v. *United States*, 328 U.S. 781 18

Bethlehem Steel Co. v. *New York State Board*, 330 U.S. 767 28

Charleston & W. Car. R.R. v. *Varnville Furniture Co.*, 237 U.S. 597 29

Cloverleaf Co. v. *Patterson*, 315 U.S. 148 28

Currin v. *Wallace*, 306 U.S. 1 15, 18, 31, 32

Erie R. Co. v. *New York*, 233 U.S. 671 29

Guss v. *Utah Labor Bd.*, 353 U.S. 1 28

Hood & Sons v. *Du Mond*, 336 U.S. 525 29

International Union v. *Wisconsin Board*, 336 U.S. 245 28

Kelley v. *Washington*, 302 U.S. 1 29

Missouri Pacific v. *Porter*, 273 U.S. 341 29

Mulford v. *Smith*, 307 U.S. 38 15, 18

Napier v. *Atlantic Coast Line R. Co.* 272 U.S. 605 28, 29

Pennsylvania v. *Nelson*, 350 U.S. 497 28

Pennsylvania R. Co. v. *Public Serv. Commn.*, 250 U.S. 566 29

Reid v. *Colorado*, 187 U.S. 137 29

Rice v. *Santa Fe Elevator Corp.*, 331 U.S. 218 28

San Diego Building Trades Council v. *Garmon*, 359 U.S. 236 28

Townsend v. *Yeomans*, 301 U.S. 441 18, 30

Turner v. *Maryland*, 107 U.S. 38 31

Weber v. *Anheuser-Busch, Inc.*, 348 U.S. 468 28

Welch Co. v. *New Hampshire*, 306 U.S. 79 28

Statutes:

Act of August 28, 1954, Section 401(e), 68 Stat. 907, as amended, 7 U.S.C. 608c–1 32

Administrative Procedure Act, Section 4, 60 Stat. 239, 5 U.S.C. 1003(d) 32

Cotton Futures Act, 39 Stat. 476, as codified, 26 U.S.C. 4863(a)(7) 32

Statutes—Continued

Page

Export Apples and Pears Act, 48 Stat. 123, 7 U.S.C. 581, Section 1 32
Export Grapes and Plums Act, 74 Stat. 734, 7 U.S.C. (Supp. II) 591, Section 1 32
Tobacco Inspection Act of August 23, 1935, 49 Stat. 731, 7 U.S.C. 511 ..... 2, 3, 4, 12, 14, 18, 19, 20, 21, 23, 32, 34–43
Section 1 (7 U.S.C. 511) 34
Section 2 (7 U.S.C. 511a) 4, 11, 16, 35
Section 3 (7 U.S.C. 511b) 4, 12, 20, 36
Section 4 (7 U.S.C. 511c) 36
Section 5 (7 U.S.C. 511d) 5, 12, 21, 24, 36
Section 6 (7 U.S.C. 511e) 5, 38
Section 7 (7 U.S.C. 511f) 5, 24, 39
Section 8 (7 U.S.C. 511g) 5, 24, 39
Section 9 (7 U.S.C. 511h) 5, 39
Section 10 (7 U.S.C. 511i) 5, 39
Section 14 (7 U.S.C. 511m) 7, 42
Tobacco Stocks and Standards Act of January 14, 1929, Section 2, 45 Stat. 1079, as amended, 7 U.S.C. 502 ..... 3, 20, 22
United States Grain Standards Act, 39 Stat. 482, 483, as amended, 7 U.S.C. 74, 76:
Section 2 32
Section 4 32
28 U.S.C. 2281 2
28 U.S.C. 2284 2
United States Warehouse Act of August 11, 1916, 39 Stat. 488, 489, as amended, 7 U.S.C. 257, 260:
Section 18 31
Section 19 ..... 3, 22, 31
Georgia Tobacco Identification Act of March 7, 1960, 1960 Ga. Laws 214 ..... 2, 8, 11, 14, 25, 27, 30, 31, 44–59
Preamble 9, 44
Section 1 ..... 9, 13, 25, 26, 45
Section 2 ..... 9, 46
Section 3 ..... 9, 46
Section 4 ..... 9, 47
Section 5 ..... 9, 47
Section 6 ..... 9, 48
Section 7 ..... 9, 49
Sections 10–12 ..... 9, 50–51

Statutes—Continued
Georgia Tobacco Identification Act—Continued Page
Section 13(A) 9, 13, 25, 51
Section 13(B) 9, 13, 26, 52
Section 13(C) 13, 26, 52
Miscellaneous:
7 C.F.R. 1.27 32
7 C.F.R. 1.28 32
7 C.F.R. 29.17 7
7 C.F.R. 29.28 7
7 C.F.R. 29.66(b) 7, 13, 24
7 C.F.R. 29.75 7
7 C.F.R. 29.79 ..... 7, 13, 24
7 C.F.R. 29.80 ..... 13, 24
7 C.F.R. 29.90 32
7 C.F.R. 29.90–99 7
7 C.F.R. 29.91 32
7 C.F.R. 29.109 7
7 C.F.R. 29.132 7
7 C.F.R. 29.1001–1225 ..... 7, 21
7 C.F.R. 29.1001–3407 20
7 C.F.R. 29.1040 ..... 6, 12
7 C.F.R. 29.1042 6
7 C.F.R. 29.1043 6
7 C.F.R. 29.1045 7
7 C.F.R. 29.1050 7
7 C.F.R. 29.1053 ..... 6, 12
7 C.F.R. 29.1055 ..... 6, 12
7 C.F.R. 29.1073 6
7 C.F.R. 29.1096 ..... 6, 12, 13, 21, 24
7 C.F.R. 29.1097 8
7 C.F.R. 29.1097–1100 21
7 C.F.R. 29.1098 8
7 C.F.R. 29.1099 8
7 C.F.R. 29.1100 ..... 8, 13, 21, 22
7 C.F.R. 29.1144 ..... 7, 13, 24
7 C.F.R. 29.1145 7
7 C.F.R. 30 3
7 C.F.R. 30.6 23
7 C.F.R. 30, 36(d) 23
7 C.F.R. 30.31–30.42 20
7 C.F.R. 103.70 3

Miscellaneous—Continued Page

79 Cong. Rec. 11865 ..... 16, 17
79 Cong. Rec. 11866 17
79 Cong. Rec. 11867 19
79 Cong. Rec. 11868–70 ..... 17, 18
79 Cong. Rec. 11878 18
79 Cong. Rec. 11879 19
79 Cong. Rec. 11882 19
12 Fed. Reg. 8041 33
17 Fed. Reg. 6610 33
22 Fed. Reg. 3747 33
23 Fed. Reg. 2668 33
24 Fed. Reg. 3978 33
Department of Agriculture, Agricultural Marketing Service Pamphlet 74, issued May 1960:
p. 3 21
p. 4 21
p. 10 21
pp. 12–13 21
Department of Agriculture, Bureau of Agricultural Economics, Misc. Cir. No. 55, "Type Classification of American-Grown Tobacco," issued January 1926. 3
pp. 1–2 23
p. 3 22
Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcement No. 118, "Classification of Leaf Tobacco covering Classes, Types, and Groups of Grades," issued November 1929, pp. 1, 2, 4 ..... 3, 23
House Rept. 1102, 74th Cong., 1st Sess.:
p. 2 ..... 17, 24
p. 5 22
S. Rept. 1211, 74th Cong., 1st Sess.:
p. 1 19
p. 2 22

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 42

PHIL CAMPBELL, COMMISSIONER OF AGRICULTURE OF THE STATE OF GEORGIA, ET AL., APPELLANTS

v.

WILLIAM HUSSEY, JR., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the United States District Court for the Southern District of Georgia (R. 153–164) is reported at 189 F. Supp. 54.

JURISDICTION

The judgment of the district court was entered on November 9, 1960 (R. 165). Notices of appeal were filed on December 7 and December 8, 1960 (R. 166, 168). This Court noted probable jurisdiction on April 3, 1961 (R. 170).

QUESTIONS PRESENTED

1. Whether the Federal Tobacco Inspection Act occupies the field of tobacco classification and iden-

tification in auction markets so as to preclude the State of Georgia from legislating concerning the classification and identification of tobacco in those markets.

2. Whether the Georgia Tobacco Identification Act conflicts with the Federal Tobacco Inspection Act and the regulatory scheme established pursuant to its provisions.

STATUTES INVOLVED

The pertinent provisions of the federal Tobacco Inspection Act of August 23, 1935, 49 Stat. 731, 7 U.S.C. 511, and the Georgia Tobacco Identification Act of March 7, 1960, 1960 Ga. Laws 214, are set forth in the Appendix, *infra*, pp. 34–59.

STATEMENT

This appeal is from a judgment of a three-judge district court (convened pursuant to 28 U.S.C. 2281, 2284) permanently enjoining defendants, officials of the State of Georgia, from enforcing the Georgia Tobacco Identification Act of 1960, 1960 Ga. Laws 214. The court determined that the Georgia Act (1) placed an invalid burden upon interstate commerce, (2) operated in a field occupied by the federal Tobacco Inspection Act of 1935, 49 Stat. 731, 7 U.S.C. 511, so as to leave no room for state legislation, and (3) was in direct conflict with the federal legislation and the regulations promulgated thereunder.

This brief is submitted in response to the Court's invitation to the Solicitor General to set forth the views of the United States (R. 170). As the interest of the United States is confined to the relation of the

Georgia statute to the federal Tobacco Inspection Act, *supra*, and the regulatory program established thereunder, our brief will be restricted to a consideration of whether the Georgia statute is valid in view of that Act and program.

1. THE FEDERAL TOBACCO CLASSIFICATION AND IDENTIFICATION PROGRAM

Federal tobacco classification standards were first promulgated by the Secretary of Agriculture in 1926,[1] under the United States Warehouse Act of August 11, 1916,[2] which required the classification, in accordance with standards established by the Secretary, of any agricultural product stored in a warehouse which, upon its application, became a licensee under the terms of the Act. These standards were expanded and reissued in 1929[3] under the Tobacco Stocks and Standards Act of January 14, 1929,[4] authorizing their use for purposes of the collection and publication of statistics by the Secretary. Finally, in the federal Tobacco Inspection Act of 1935, Congress again authorized tobacco classification standards, but this time made it mandatory that tobacco sold in designated auction markets be classified in accordance with those standards.

---

[1] Department of Agriculture, Bureau of Agricultural Economics, Misc. Cir. No. 55, "Type Classification of American-Grown Tobacco," issued January 1926. See 7 C.F.R. 103.70.

[2] Section 19, 39 Stat. 489, as amended, 7 U.S.C. 257.

[3] Department of Agriculture, Bureau of Agriculture Economics, Service and Regulatory Announcement No. 118, "Classification of Leaf Tobacco Covering Classes, Types, and Groups of Grades," issued November 1929, 7 C.F.R. Part 30.

[4] Section 2, 45 Stat. 1079, as amended, 7 U.S.C. 502.

616233—61——2

In enacting the federal Tobacco Inspection Act of 1935, 49 Stat. 731, 7 U.S.C. 511 (App., *infra*, pp. 34-43), Congress determined (Section 2, 7 U.S.C. 511a) that the sale of tobacco at auction markets, as commonly conducted, is in interstate commerce and "affected with a public interest"; that "the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers"; and that "without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in [interstate] commerce" and constitute a burden upon that commerce. These conditions, Congress declared, "make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in [interstate] commerce and the public interest therein" (*ibid.*).

To that end, Congress authorized the Secretary of Agriculture, after investigation, "to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States" (Section 3, 7 U.S.C. 511b). In addition, the Secretary was empowered to "modify any standards established under authority of this Act whenever, in his judgment, such action is advisable" (*ibid.*).

These "uniform standards of classification" are to be applied in the following manner: upon the affirma-

tive vote of two-thirds of the growers of tobacco sold in an auction market, the Secretary may designate that market as one in which tobacco moves in interstate commerce. After due public notice of this designation, no tobacco is to be offered for sale at auction in that market "until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act" (Section 5, 7 U.S.C. 511d). The Act further provides that the Secretary shall provide for reinspection and for an appellate inspection for the purpose of confirming or reversing the classification first made (Section 7, 7 U.S.C. 511f).

The classification made on the inspection of the tobacco is to be certified on the warehouse ticket or on such other tag or label as shall be furnished by the warehouseman at the auction house and this certificate is to be received in all courts and by all federal officers and employees as prima facie evidence of the truth of the statements contained therein (Sections 7, 8, 7 U.S.C. 511f, 511g).[4]

Pursuant to the authority granted him under the Act, the Secretary has promulgated standards for the classification of tobacco which divide tobacco into various classes, types, groups, and grades. A *class* is

[4] In addition to providing for mandatory inspection and classification at designated auction markets, the Act authorizes the Secretary to provide, for a fee, inspection and classification of tobacco at other locations when it is requested by a person financially interested in the tobacco to be inspected (Section 6, 7 U.S.C. 511e). The Act also authorizes the collection and publication of information on market conditions and provides criminal penalties for various specified acts (Sections 9, 10, 7. U.S.C. 511h, 511i).

defined as a "major division of tobacco based on characteristics caused by varieties, soils, or climatic conditions, and the method of cultivation, harvesting, or curing" (7 C.F.R. 29.1040). A class is subdivided into *types,* which are "division[s] of a class of tobacco having certain common characteristics and closely related grades. Tobacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco" (7 C.F.R. 29.1096). A type is in turn subdivided into *grades* "according to group and quality, and according to color when it is of sufficient importance to be treated as a separate factor" (7 C.F.R. 29.1053). A *group* is defined as a "division of a type covering several closely related grades based on the general quality of the tobacco, including body, the percentage of injury, and other characteristics" (7 C.F.R. 29.1055).[*]

---

[*] Certain additional terms are given specific meanings. For example, *quality* is defined as a "division or group, forming the second factor of a grade, based upon the relative degree of one or more of the elements of quality in tobacco, construed in relation to the type as a whole unless otherwise specifically restricted, as in the element 'color shade' which is restricted to a given color" (7 C.F.R. 29.1073). *Condition* is defined as the "state of tobacco in storage or in relation to its preparation for storage, with reference to its manner of preparation or its degree of fermentation such as undried, air-dried, steam-dried, sweating, sweated, and resweated" (7 C.F.R. 29.1043). *Color* is defined as a "subdivision of a group based on the relative hues, saturations, and brilliances common to the group and on certain elements of quality such as body and maturity which are closely related to color" (7 C.F.R. 29.1042).

Pursuant to regulations and rules promulgated by the Secretary,[1] the inspection certificate must show, *inter alia*, "the type and grade of the tobacco," each of which is to be "based upon a thorough examination of the lot of tobacco to be certificated" (7 C.F.R. 29.66(b), 29.75, 29.79, 29.109, 29.1144, 29.1145). Any "interested party"[2] may obtain review of this certification by the certifying inspector or by a supervisor (7 C.F.R. 29.132), and in addition he has a right to appeal to the Director of the Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, or his designee, whose findings "shall be final" (7 C.F.R. 29.17, 29. 90–99).

Among the classes of tobacco established by the Secretary is one for "flue-cured tobacco"[3] (7 C.F.R. 29.1001–1225). This class is divided into four types:

---

[1] Section 14 of the Act, 7 U.S.C. 511m, authorizes the Secretary "to make such rules and regulations * * * as he may deem necessary to effectuate the purposes of this Act * * *."

[2] "Interested party" is defined as the "owner or other financially interested person; including the warehouseman, commission merchant, association, and other person who has the tobacco in his custody for sale; the authorized agent of the owner; and persons to whom or by whom the tobacco has been sold on the basis of a certificate issued, or sample prepared, under the act, but not including a person who is negotiating for its purchase" (7 C.F.R. 29.28).

[3] "Cured" is defined as "[t]obacco thoroughly dried of its sap by either natural or artificial processes" (7 C.F.R. 29.1045). "Flue-cured" is defined as "tobacco cured under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco; or tobacco cured by some other process which accomplishes the same results" (7 C.F.R. 29.1050).

11,[10] 12,[11] 13,[12] and 14. Type 14—the type involved in this case—is defined by the Secretary as "[t]hat type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida, and Alabama, produced principally in the southern section of Georgia and to some extent in Florida and Alabama" (7 C.F.R. 29.1100).

2. THE GEORGIA TOBACCO IDENTIFICATION PROGRAM

The Georgia Tobacco Identification Act of March 7, 1960, 1960 Ga. Laws, 214 (App., *infra*, pp. 44–59), was enacted "to provide a means of identification of types of flue-cured leaf tobacco sold in this State to the end that all purchasers thereof may be

[10] Type 11 is defined as "[t]hat type of flue-cured tobacco commonly known as Western Flue-cured or Old Belt and Middle Belt Flue-cured, produced principally in the Piedmont sections of Virginia and North Carolina and the district extending eastward to the coastal plains region. That portion of this type known as Old Belt Flue-cured, normally characterized by a heavier body and darker color shade and produced principally in the Piedmont sections of Virginia and North Carolina, may be classified as Type 11a; and that portion of the type known as Middle Belt Flue-cured, normally characterized by a thinner body and lighter color shade and produced principally in a section lying between the Piedmont and coastal plains regions of Virginia and North Carolina, may be classified as Type 11b" (7 C.F.R. 29.1097).

[11] Type 12 is "[t]hat type of flue-cured tobacco commonly known as Eastern Flue-cured, New Belt of North Carolina Flue-cured, or Eastern Carolina Flue-cured, produced principally in the coastal plains section of North Carolina, north of the South River" (7 C.F.R. 29.1098).

[12] Type 13 is "[t]hat type of flue-cured tobacco commonly known as Southeastern Flue-cured, South Carolina Flue-cured, or New Belt of South Carolina, produced principally in the coastal plains section of South Carolina and the southeastern counties of North Carolina, south of the South River" (7 C.F.R. 29.1099).

assured of the positive identification of tobacco sold in this State" (Section 1)." The Act provides, among other things, for licensing and bonding any person operating an auction sale of flue-cured tobacco in Georgia (Sections 2 and 3), maximum rates to be charged (Section 4), rendering of statements (Section 5), keeping of records (Sections 6, 7), a minimum marketing season, and a maximum marketing day and week (Sections 10–12).

The statute defines "Type 14 flue-cured leaf tobacco" as "that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the State of Georgia, Florida, and Alabama" (Section 1). It provides that, "[a]s an aid in providing positive identification of type 14 flue-cured tobacco," each auction warehouseman shall cause "white identification tags to be placed upon each sheet of type 14 tobacco received in his warehouse for sale by requiring that producers, at the time of the receipt of tobacco in the warehouse submit proof of the origin of the tobacco to be sold" (Section 13(A)). Each sheet of "other than type 14 tobacco" is to be identified by a colored tag (Section 13(B)). The auction warehouseman is given the positive duty "to ascertain from producers or others the origin of the tobacco offered for receipt and to place the appropriate tag upon the tobacco so as to indicate the type" (*idid.*)

" In the preamble to the Act, the Georgia legislature stated that its purpose was, *inter alia*, "to provide a means of identifying all types of flue-cured leaf tobacco sold in this State"; and "to provide for identification tags for use in marketing tobacco in this State * * *."

3. THE PROCEEDINGS IN THE DISTRICT COURT

Appellees, producers of tobacco and auction warehousemen, instituted this action for a declaration that the tobacco classification and identification provisions of the Georgia Act, *supra*, are null and void, and for an order enjoining the enforcement of those provisions of the Act (R. 1, 10, 23).

By stipulation (R. 26–27) and at trial it was developed that there is a mobility in the merchandising of tobacco which has a bearing on the operation of the Georgia statute. For example, approximately fifty percent of the flue-cured tobacco sold at the five auction markets of northern Georgia comes from outside Georgia, some from as far away as Virginia and Missouri, though most of the out-of-state tobacco is produced in the Carolinas (R. 27, 54, 56, 57, 64–66, 72–73, 75, 84, 85, 96). The tobacco, after being weighed at the tobacco houses, is placed in line on the warehouse floor for sale (R. 72). It is typed and graded by a federal inspector, acting under the Federal Tobacco Inspection Act (R. 72, 120–21). The sale is then conducted by an auctioneer, with from seven to eight seconds spent on each bundle of tobacco (R. 72, 114).

On the two days that the identification provisions of the Georgia Tobacco Identification Act were in effect (prior to the issuance of a restraining order by the court below) blue tags were placed on tobacco grown outside Georgia and white tags on that produced within Georgia (R. 67–69). The different colored tags were placed on tobacco identically typed

and graded by the federal inspectors—that is, certain tobacco certified by the federal inspector as Type 14 under the standards established by the Secretary of Agriculture was given a blue tag, indicating that under the standards of the Georgia Tobacco Identification Act the tobacco was not Type 14 (R. 62, 68, 77).

The district court held the identification provisions of the Georgia Tobacco Identification Act to be invalid for three separate reasons:

First, the court held that the Georgia statute constitutes an unlawful interference with interstate commerce by imposing an onerous burden on tobacco grown outside of Georgia in favor of like tobacco produced in that state (R. 161).

Second, the court held that Congress in enacting the Tobacco Inspection Act had so occupied the field of tobacco classification and identification that the challenged portions of the Georgia Act could not stand. The court referred to the recitation of purpose in Section 2 of the federal Act, 7 U.S.C. 511a, that "uniform standards of classification and inspection" were "imperative" to prevent "unreasonable fluctuations in prices and quality determinations" that "constitute a burden upon commerce" (R. 161). "This language," the court went on, "shows the intent of Congress that there shall be a scheme of Federal regulation for the classification, grading and typing of tobacco so pervasive as to require the inference that, within this field, no room would be left for state action" (R. 162).

Finally, the court held the Georgia classification standards for tobacco to be in "direct conflict" with

the federal statute and regulations (R. 163). While the Georgia standard is based entirely on geographic origin, the federal standards, though referring to the area in which each type of tobacco is "produced principally," required that "tobaccos which have the same characteristics and corresponding qualities, colors and lengths are to be treated as one type even though grown on different sides of a boundary between two states" (R. 160).

SUMMARY OF ARGUMENT

The federal Tobacco Inspection Act of 1935, 49 Stat. 731, 7 U.S.C. 511 (App., *infra*, pp. 34–43), was enacted to meet the need for uniform national standards of tobacco classification and impartial inspection of tobacco by a disinterested person in order to provide both buyers and sellers in the auction markets with useable information concerning the classification of the various lots of tobacco offered for sale. To achieve this purpose, Congress authorized the Secretary of Agriculture "to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined" (Section 3, 7 U.S.C. 511b). In addition, the Act prescribes that tobacco offered for sale be inspected and classified by federal inspectors in accordance with the federal standards and that the classification be communicated to the buyers and sellers (Section 5, 7 U.S.C. 511d).

The Secretary has implemented this Act with classification standards and regulations. The standards divide tobacco into classes, which are subdivided into types; types in turn are subdivided into groups and grades (7 C.F.R. 29.1040, 29.1053, 29.1055, 29.1096).

Within the flue-cured class of tobacco there are four types. One of these, Type 14, is defined as "[t]hat type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida, and Alabama, produced principally in the southern section of Georgia and to some extent in Florida and Alabama" (7 C.F.R. 29.1100). But the regulations also provide that "[t]obacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco" (7 C.F.R. 29.1096), and it is clear that under the federal regulatory scheme tobacco meeting the characteristics of Type 14 is to be so classified, regardless of where it is grown. To make the federal classification known, the Secretary has prescribed that the classification assigned to a lot of tobacco shall be communicated to the seller and potential buyer by means of an inspection certificate and an oral announcement prior to the auction (7 C.F.R. 29.66(b), 29.79, 29.80, 29.1144).

In contrast, the Georgia Tobacco Identification Act, 1960 Ga. Laws 214 (App. *infra*, pp. 44–59) establishes its own standard, based solely on place of production, to differentiate Type 14 flue-cured tobacco from other types (Sections 1, 13 (A), (B), (C)); and it prescribes its own special method of communicating that information to the buyers and sellers (Section 13(A)). The result during the two days the Georgia statute was in actual operation was that certain tobacco was classified as Type 14 under the federal statute and classified as another type under the Georgia statute—

with each determination communicated to the buyers and sellers in accordance with the procedures prescribed by the statute and regulations of each jurisdiction.

In these circumstances, it is plain that the classification and indentification provisions of the Georgia statute are invalid because they invade a field—the area of classification and identification of tobacco sold through auction markets—comprehensively covered by the federal statute and regulations. It is immaterial whether the Georgia statute conflicts with, coincides with, or supplements the federal regulatory scheme.

The Georgia statutory provisions are *a fortiori* invalid because they do in fact conflict with the federal statute, regulations, and standards. It was the purpose of Congress to erect a structure of uniform national standards for the classification of tobacco, which standards would be applied to individual lots by federal inspectors and the results communicated to interested persons in a prescribed manner. But Georgia has established a standard for Type 14 of flue-cured tobacco which conflicts with the federal standard and requires the communication of the state classification in a special manner. The inevitable—certainly, the probable—result of this conflict in standards and identification was, and would be, confusion, the very thing Congress sought to eliminate when it enacted the federal Tobacco Inspection Act.

ARGUMENT

THE CLASSIFICATION AND IDENTIFICATION PROVISIONS OF THE GEORGIA TOBACCO IDENTIFICATION ACT INVADE A FIELD PREEMPTED BY THE FEDERAL TOBACCO INSPECTION ACT AND CONFLICT WITH THE FEDERAL STATUTE AND IMPLEMENTING REGULATIONS

The federal Tobacco Inspection Act, and the standards and regulations promulgated thereunder, provide a comprehensive system of federal classification, inspection, and identification of tobacco sold through the warehouse-auction method. No question has been, or could be, raised concerning the validity of the federal classification scheme. The power of Congress to prescribe this scheme of regulation has been upheld by this Court in *Mulford* v. *Smith*, 307 U.S. 38, and *Currin* v. *Wallace*, 306 U.S. 1.

There is also no question that, if any provision of the Georgia Tobacco Inspection Act legislates in a field preempted by Congress, that provision must fail. See Appellants' Brief, p. 14. Appellants attempt only to show that there has been no congressional preemption of the area in which the provisions of the Georgia Act apply. This attack must fail for two related reasons: first, the Georgia Act covers classification and identification of tobacco sold in Georgia auction markets, concerning each of which subjects Congress has provided a comprehensive system of federal regulation; and, second, the Georgia legislation is in direct

conflict with the federal regulatory scheme. Congress has established a detailed federal program of grading and identification, and it is of the essence of such a program that there cannot be superimposed on it a different grading system with its own requirements.

A. THE PURPOSE OF THE FEDERAL TOBACCO INSPECTION ACT IS TO PROVIDE A SYSTEM OF UNIFORM NATIONAL STANDARDS FOR THE CLASSIFICATION OF TOBACCO, OF INSPECTION AND CLASSIFICATION BY AN IMPARTIAL FEDERAL INSPECTOR, AND A MEANS OF IDENTIFICATION OF THAT CLASSIFICATION

The federal Tobacco Inspection Act (App., *infra*, pp. 34–43) was enacted in 1935 to meet the need for uniform national standards of tobacco classification and impartial inspection of tobacco by a disinterested person in order to prevent what a supporter of the Act called a system of "wholesale robbery" of tobacco growers by tobacco buyers and speculators. 79 Cong. Rec. 11865. The Act itself states its purpose. Congress found that the classification of tobacco "according to type, grade, and other characteristics" affects the prices received; that "without *uniform* standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control" and "unreasonable fluctuations in prices and quality determinations occur," constituting a burden upon interstate commerce. Section 2, 7 U.S.C. 511a. (Emphasis added.) Consequently, Congress found it "imperative" that "*uniform* standards of classification and inspection" be used. *Ibid.* (Emphasis added.)

The market practices which led to the Act are described at length in the report of the House Com-

mittee on Agriculture, H. Rept. No. 1102, 74th Cong., 1st Sess., and in the debates on the floor of the House. The tobacco, after being sorted by the grower in accordance with whatever criteria he himself devised, was brought to the auction warehouse where it was put in baskets, weighed, and placed in rows on the floor. It was then sold at auction on a commission basis by the warehouseman acting as the representative of the tobacco grower. The sales were made without any prior determination of the grade of each basket of tobacco and without the grower having any knowledge of the amounts that lots of similar tobacco were bringing. The selling was at a rapid rate, some 7 to 10 seconds being spent on each basket of tobacco. Although the purchasers (representatives of tobacco companies and individual speculators) were experts in the typing and grading of tobacco, the farmer was considered by Congress to be incapable of familiarizing himself with the 100 or more grades of each type of tobacco and keeping himself informed as to current market prices. The House Committee concluded that "the possession of grade and price information by the buyers, and the lack of it on the part of the growers, places the growers under a severe handicap in the marketing of their tobacco and opens the way to abuses and practices by which farmers are victimized. * * * It is the thought of the committee that if the purchaser needs an expert in grades in order to protect his interest in the sale the growers should be accorded the same protection." [14]

[14] H. Rept. No. 1102, 74th Cong., 1st Sess., p. 2. See 79 Cong. Rec. 11865, 11866, 11868–70. The market practices relative to

On the floor of the House, Congressman Hancock, after describing the market practices and explaining that these practices encouraged snap judgments on the part of both buyers and sellers and left farmers at the mercy of buyers and speculators, concluded that the bill (which became the federal Tobacco Inspection Act) would "ameliorate some of [these] adverse conditions." It would do so, he stated, by furnishing, first, an inspection service by which tobacco offered for sale would be inspected by competent government inspectors and "graded according to United States standards of quality" and, second, a market news service which would furnish current market prices for each grade of tobacco. "[T]hese two services, inspection and market news, penetrate to the very heart of the deficiencies of the auction marketing system. For whereas under existing conditions the grower is without criteria as to either the quality or the value of his tobacco, these services furnish him impartial, disinterested information on both grade and value." 79 Cong. Rec. 11869–70. Representative Mitchell later emphasized that "[t]obacco inspection will bring about a more uniform class for tobacco of like quality and classification," and spoke of the advantages of having a "standard grade" for the classification of tobacco. 79 Cong. Rec. 11878.

The Senate Agriculture Committee agreed with these views. In its report, the Committee adopted as

---

tobacco in general and to the auction system in particular have been fully described by this Court in *Mulford* v. *Smith*, 307 U.S. 38, 47–50; *Currin* v. *Wallace*, 306 U.S. 1, 7–8; *Townsend* v. *Yeomans*, 301 U.S. 441, 445; *American Tobacco Co.* v. *United States*, 328 U.S. 781, 800.

its own, and reprinted, the statement made on the bill by the Department of Agriculture. This statement declared that the "first main objective of this bill is to furnish tobacco growers dependable information as to the quality of their tobacco according to *uniform standards.* * * * The bill would authorize the Secretary of Agriculture to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, *and the standards so established would be the official standards of the United States for such purpose.*" S. Rept. No. 1211, 74th Cong., 1st Sess., p. 1. (Emphasis added.)

The opponents of the bill, on the other hand, maintained that there was no need for national uniform standards of tobacco classification. Representative Harlan, for example, declared, "[i]t is purely a local question because the growth of tobacco in this country is spotty." The different kinds of tobacco grown in different places "are no more alike than cabbage and cauliflower. There is no similarity in the grading problems. There is no need of a national grade system. It is purely a local problem. It is unlike grading wheat or cotton, which are uniform crops. Now, if it is advisable to make this grading compulsory, then it ought to be done by the States, and not by the Federal Government." 79 Cong. Rec. 11882. Congress was also informed that tobacco grading statutes had been enacted by at least two of the states. 79 Cong. Rec. 11867, 11879. But it is plain that, in enacting the federal Tobacco Inspection Act and by specifying that the Secretary of Agriculture shall

establish uniform standards for tobacco classification, Congress rejected the argument that this matter should be handled by the states so that the standards would vary with the peculiarities of local conditions or of local views.

B. THE STANDARDS AND REGULATIONS PROMULGATED UNDER THE FEDERAL TOBACCO INSPECTION ACT CREATE FOR TOBACCO AUCTION MARKETS A COMPREHENSIVE SYSTEM OF FEDERAL TOBACCO CLASSIFICATION AND IDENTIFICATION BASED ON CHARACTERISTICS OF TOBACCO AND NOT ON GEOGRAPHIC ORIGIN

1. (*a*) To achieve its purpose of uniformity, Congress authorized the Secretary of Agriculture "to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States" (Section 3, 7 U.S.C. 511b). And, as we have seen, *supra*, pp. 5–8, the Secretary has promulgated comprehensive standards in accordance with this congressional authorization and with that of the Tobacco Stocks and Standards Act.[15] These standards divide domestic leaf tobacco into 7 classes and 27 types, each of which has 4 or more groups and several dozen grades.[16] Furthermore, Congress provided that these standards should be used for the classification of all tobacco sold on each auction market designated by the Secretary upon the affirmative vote of two-thirds of the growers who sell their to-

[15] Section 2, 45 Stat. 1079, as amended, 7 U.S.C. 502.

[16] 7 C.F.R. 30.31–30.42. As the Tobacco Inspection Act applies only to tobacco that is marketed through the auction warehouse system, its provisions currently apply only to 5 classes and 12 types of tobacco. 7 C.F.R. 29.1001–29.3407. The terms class, type, group, and grade are defined at pp. 5–6, *supra*.

bacco on that market." This classification is to be accomplished by the "authorized representative" of the Secretary, and the federal inspector is the "authorized representative." See the Statement, *supra*, pp. 5, 7.

The regulations establish "flue-cured tobacco" as one class and within that class specify 4 separate types, each of which has 7 groups and 172 possible grades.[17] One of these types, Type 14, is defined as (7 C.F.R. 29.1100):

> That type of flue-cured tobacco commonly known as Southern Flue-cured or New Belt of Georgia, Florida, and Alabama, produced principally in the southern section of Georgia and to some extent in Florida and Alabama.

Tobacco is classified within this type *no matter where it is grown*, for, the regulations also require "[t]obacco which has the same characteristics and corresponding qualities, colors, and lengths shall be treated as one type, regardless of any factors of historical or geographical nature which cannot be determined by an examination of the tobacco" (7 C.F.R. 29.1096).

(*b*) When Congress enacted the federal Tobacco Inspection Act, it was aware that the Secretary of Agriculture had already established a set of stand-

---

[17] Section 5 of the federal Tobacco Inspection Act, 49 Stat. 732, 7 U.S.C. 511d (App., *infra*, pp. 36–38). Since 1946 all flue-cured tobacco markets have been so designated. See U.S. Department of Agriculture, Agricultural Marketing Service Pamphlet 74, issued May 1960, p. 3.

[18] 7 C.F.R. 29.1001–1225, 29.1097–1100. See U.S. Department of Agriculture, Agricultural Marketing Service, Marketing Division, Pamphlet 74, issued May 1960, pp. 4, 10, 12–13.

ards for tobacco classification,"[30] under the United States Warehouse Act[31] and the Tobacco Stocks and Standards Act.[32] The standards, first issued in 1926, provided for a U.S. Type 14 flue-cured tobacco in substantially the same terms as that now found for Type 14 in 7 C.F.R. 29.1100, *supra*.[33] In addition, the Department of Agriculture pamphlet[34] announcing the 1926 standards explained why geographic information is given in defining the various types of tobacco:

> It is not possible, without going into considerable detail, to specify all of the sections in which a type is produced or to include all of the names by which a type is known in the trade at the present time. In the present classification it has been the purpose of the department to use a sufficient number of names to identify each type of tobacco. To supplement this information the principal sections in which each type is produced are also shown.

---

[30] H. Rept. No. 1102, 74th Cong., 1st Sess., p. 5; S. Rept. No. 1211, 74th Cong., 1st Sess., p. 2.

[31] Section 19, 39 Stat. 489, 7 U.S.C. 257, authorizes the Secretary of Agriculture "to establish and promulgate standards for agricultural products by which their quality or value may be judged or determined."

[32] Section 2, 45 Stat. 1070, as amended, 7 U.S.C. 502.

[33] U.S. Type 14 was defined as "[t]hat type of flue-cured tobacco commonly known as Southern Flue-cured, Southern Bright, New Belt of Georgia and Florida, Southern District Bright, Southern District Yellow Leaf, Florida Bright, Alabama Bright, or Florida Flue-cured; produced principally in the southern section of Georgia, and extending into Florida and Alabama." Department of Agriculture, Bureau of Agricultural Economics, Misc. Civ. 55, "Type Classification of American-Grown Tobacco," issued January 1926, p. 3.

[34] See note 22, *supra*.

> In case the local name of a type or the section in which it is produced is not covered under the description of the type, it does not follow that the tobacco is of a different type. The following rule will assist in determining the type in which any tobacco should be placed: "Any tobacco having the same characteristics and corresponding qualities, colors and lengths is treated as one type, regardless of any factors of historical or geographical nature which can not be determined by an examination of the tobacco." [34]

These standards, known to Congress in 1935,[35] were the basis of the standards subsequently promulgated by the Secretary under the federal Tobacco Inspection Act.

(*c*) It is thus clear that Congress has provided, and the Secretary of Agriculture has implemented, a full program of uniform tobacco classification, now mandatory in all flue-cured tobacco markets. It is also clear that the standards established by the Secretary are not based on geographic origin; rather, they are based on

---

[34] *Id.*, at 1-2. The standards were revised and reissued in 1939. Type 14 was again included in substantially the same form. Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements No. 118, "Classification of Leaf Tobacco Covering Classes, Types, and Groups of Grades," issued November 1939, p. 4, 7 C.F.R. 30.26(d). Once again, there was included a rule that all tobacco of like characteristics should be identically typed regardless of geographical origin. *Id.*, at 2, see 7 C.F.R. 30.6. It was explained that, "[a]s in the original classification, no attempt has been made to give all of the various names by which a type may be locally known or all of the sections in which it is produced." *Id.*, at 1.

[35] See note 19, *supra*, p. 22.

characteristics of tobacco which, in the Secretary's view, justify their categorization into various types. Tobacco that meets the characteristics of one specific type is includable in that type regardless of where it might have been grown. Appellants' contention to the contrary (Br., pp. 6, 11) ignores the force and effect of 7 C.F.R. 29.1036, *supra*, p. 21, which in plain language and purpose requires the typing of tobacco to be on the basis of characteristics and not of geography.

2. In addition to the establishment of uniform tobacco classification standards and the requirement of inspection to ascertain where a particular lot of tobacco fits within that classification structure, the federal Act provides for the communication of the results of the inspection to both the seller and the potential buyer of tobacco. As the House report makes clear, knowledge of the assigned classification would aid the buyer in determining whether and how much to bid on a certain lot of tobacco and the seller in determining whether to accept or reject that bid."

Specifically, the Act provides that the tobacco classification shall be certified by the federal inspector on an inspection certificate." And the Secretary, in the regulations, has directed that the classification be placed on the inspection certificate and announced by the warehouseman or his representative at the time the lot is offered in the auction."

3. In sum, Congress intended to and did establish a comprehensive system of uniform national standards

" H. Rept. No. 1162, 74th Cong., 1st Sess., p. 2.
" Sections 5, 7, 8, 7 U.S.C. 511d, f, g.
" 7 C.F.R. 29.68(b), 29.79, 29.80, 29.1144.

for tobacco classification based on tobacco characteristics, of inspection and classification of individual lots of tobacco by impartial disinterested federal inspectors, and of identification of this classification to the buyer or seller. In so doing, Congress considered the argument that these matters should be left to the states and rejected it. The Secretary of Agriculture, the official to whom Congress has delegated authority in this matter, has exercised that authority to the extent and in the manner which he deems appropriate. There is no challenge to his authority or to the requirements he has imposed. A full federal grading and identification system is in existence.

C. THE CLASSIFICATION AND IDENTIFICATION PROVISIONS OF THE GEORGIA TOBACCO IDENTIFICATION ACT LIE IN THE SAME FIELD AS, AND ARE IN CONFLICT WITH, THE CLASSIFICATION AND IDENTIFICATION PROVISIONS OF THE FEDERAL TOBACCO INSPECTION ACT

1. Through its Tobacco Identification Act (App., *infra*, pp. 44–59) the State of Georgia has legislated in an area in which, as we have shown, Congress has acted to establish a uniform national system for classifying tobacco. In this legislation Georgia has attempted to establish its own divergent standard for Type 14 flue-cured tobacco and its own method of identification.

The Georgia statute defines Type 14 tobacco as "that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the State of Georgia, Florida, and Alabama." Section 1, *infra*, pp. 9, 45–46. The statute goes on to make clear that the one criterion to differentiate Type 14 from "other types" is its "origin," *the place of production*. Sections 13 (A),

(B), (C), *infra*, pp. 51–52. And so it has been interpreted and applied in practice. If the tobacco is grown in Georgia, Florida, or Alabama, it falls within Type 14 as defined by the Georgia Act, but if it is grown in the Carolinas or Virginia it is outside the Georgia standards for Type 14 (R. 67–69)."

The definition of Type 14 tobacco in Section 1 of the Georgia Act is ignored by appellants when they contend (Brief, p. 12) that the Act does no more than require "proper identification" of tobacco sold in Georgia. To the contrary, as we have seen, *supra*, pp. 9, 10–11, 20–26, the Georgia Act not only attempts to define Type 14 tobacco, but does so by establishing standards different from those determining whether tobacco is Type 14 under the federal Act. Whereas the federal classification system defines the various types of tobacco in accordance with their characteristics (see pp. 20–23, *supra*), Georgia defines Type 14 merely on the basis of geography. And, as the record demonstrates (R. 62, 68, 77), the result during the two days in which the Georgia Act operated was that the same tobacco was classified Type 14 under federal standards and another type under Georgia standards. The result was the very opposite of the uniformity and certainty that Congress intended.

2. If it be assumed, however, as appellants contend (Brief, p. 12), that the challenged provisions

---

"The court below found, in its opinion (R. 160), that "The testimony of the defendants established that, in fact, tobaccos having the same characteristics and corresponding qualities, colors and lengths may be grown on both sides of the boundary line between Georgia and South Carolina."

of the Georgia Act provide for no more than identification of the federal type of tobacco being sold. appellants' cause is not aided. For, as we have demonstrated, pp. 5, 24–25, *supra*, an integral part of the federal tobacco classification scheme is the identification of the type and grade of tobacco in the form both of an inspection certificate and of an oral announcement at the time of the sale. The Georgia identification provisions, at the very least, duplicate the means of identification that Congress and the Secretary of Agriculture deem appropriate. In actual fact, by requiring the designation of the classification of the tobacco pursuant to standards different than those promulgated by the Secretary, the Georgia identification provisions result in confusion on the market floor and are subversive of the very purposes that prompted the enactment of the federal statute. The objectives of any uniform system of grading and identification require that it stand alone, unconfused by another system of grading, whether it be parallel or inconsistent.

D. SINCE THE CLASSIFICATION AND IDENTIFICATION PROVISIONS OF THE GEORGIA ACT REGULATE THE SAME FIELDS AS THE FEDERAL TOBACCO INSPECTION ACT, AND CONFLICT WITH THE REGULATORY SCHEME ESTABLISHED UNDER THAT ACT, THEY ARE INVALID

1. The legal principles controlling on the question of the validity of state legislation in an area preempted by Congress in a comprehensive regulatory scheme need no extensive discussion. It is well settled that, whenever federal regulation is so pervasive as to manifest a congressional intent to occupy the field of regulation, state regulation with respect to the same

subject matter is precluded. See, for example, *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236; *Pennsylvania* v. *Nelson*, 350 U.S. 497, 504; *Guss* v. *Utah Labor Bd.*, 353 U.S. 1, 2–12; *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 480–81; *Bethlehem Steel Co.* v. *New York State Board*, 330 U.S. 767, 773–77. The power of Congress to legislate in an area in such a manner as to exclude state action is not limited to situations in which national uniformity is so essential that, lacking congressional permission, all state action is invalid notwithstanding a complete absence of federal regulation. *Cloverleaf Co.* v. *Patterson*, 315 U.S. 148, 154–55. And it is immaterial that Congress chose to delegate to an administrator the task of drawing up the detailed regulations. *Napier* v. *Atlantic Coast Line R. Co.*, 272 U.S. 605; *Bethlehem Steel Co.* v. *New York State Board*, *supra*, at 773–774.

Congress need not declare explicity that it is preempting an area to the exclusion of the states. If the scheme of federal legislation indicates that Congress left no room for the states to supplement it, then any state legislation in that field is precluded by the federal legislation. *Rice* v. *Santa Fe Elecator Corp.*, 331 U.S. 218, 230. "It long has been the rule that exclusion of state action may be implied from the nature of the [federal] legislation and the subject matter although express declaration of such result is wanting." *Bethlehem Steel Co.* v. *New York State Board*, *supra*, at 772. See also *International Union* v. *Wisconsin Board*, 336 U.S. 245, 253; *Welch Co. v.* New *Hampshire*, 306 U.S. 79, 85; *Pennsylvania R. Co.* v. *Public*

Serv. Commn., 250 U.S. 566, 569; *Reid* v. *Colorado*, 187 U.S. 137, 148.

Furthermore, there need be no direct conflict between the federal and state legislation. When "Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go. *Charleston & W. Car. R.R.* v. *Varnville Furniture Co.*, 237 U.S. 597, 604. Where congressional legislation occupies the field, a state statute "cannot be applied in coincidence with, as complementary to or as in opposition to, federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction." *Missouri Pacific* v. *Porter*, 273 U.S. 341, 346. "[C]oincidence is as fatal as conflict when Congress acts." *Hood & Sons* v. *Du Mond*, 336 U.S. 525, 543. And even coincidence is not necessary, for the states may not even supplement the federal regulation. *Pennsylvania R. Co.* v. *Pulic Serv. Commn.*, 250 U.S. 566, 569; *Kelley* v. *Washington*, 302 U.S. 1, 9; *Napier* v. *Atlantic Coast Line R. Co.*, 272 U.S. 605; *Erie R. Co.* v. *New York*, 223 U.S. 671, 683.

2. We have shown that in the federal Tobacco Inspection Act Congress authorized the establishment, on a mandatory basis, of uniform national standards for the classification of tobacco sold by means of warehouse auctions. *Supra*, pp. 4–5, 16–24. In addition, Congress directed the inspection of the tobacco by independent federal inspectors who were charged with classifying the tobacco in accordance with the federal

standards. *Supra,* pp. 5, 7, 20–21. Congress also provided for the identification of this classification for the guidance of both seller and buyer. *Supra,* pp. 5, 24. Though Congress authorized this uniform national program of tobacco classification, inspection, and identification, and laid down its guidelines, it left to the Secretary of Agriculture the task of implementing it through detailed regulations; this the Secretary has done. *Supra,* pp. 5–7, 20–21. Congress established this program of federal classification, inspection, and identification of tobacco in response to a felt need for uniformity. It left no room for the states to act on these matters, though it did not legislate a program of complete regulation of the auction market. See *Townsend* v. *Yeomans,* 301 U.S. 441.

We have also shown that in its state Tobacco Identification Act, Georgia has created its own standards to differentiate Type 14 flue-cured tobacco from other types—so as to discriminate against certain out-of-state tobaccos included within the federal Type 14—and has prescribed its own method of identifying tobacco sold in its auction markets. Even if it be assumed, contrary to the fact, that the Georgia definition of Type 14 tobacco is coincident with the federal, and that Georgia is doing no more than assisting the Secretary of Agriculture in seeing that the tobacco is properly identified as to type, the Georgia statute cannot stand under the established principles of federal preemption.

3. The provisions of the Georgia statute with which we are concerned are invalid for the additional reason that they *are* directly repugnant to the federal

regulations.[20] We have pointed out (*supra*, pp. 20–24) that under the federal standards types of tobacco are classified in accordance with characteristics of the tobacco and not by place of origin. We have also seen (*supra*, pp. 25–26) that under the Georgia statutory standards Type 14 tobacco is differentiated from other types of flue-cured tobacco solely on the basis of place of origin. Thus, the same tobacco was and could be classified under the federal standards as Type 14 and under the Georgia standard as other than Type 14. And while the federal identification apparatus identified the tobacco as Type 14, that put into motion by Georgia identified it as another. Plainly, this situation is the direct opposite of the certainty and uniformity that Congress intended.

4. The significance of the question of preemption in this case is not limited to the typing of tobacco. If Georgia is able validly to establish its own standards for the typing of tobacco and the identification of that type, there appears to be no impediment to its valid establishment of its own standards for the seven classes of domestic tobacco and the upwards of two hundred grades within each class. The same process could be followed by each of the other states in which tobacco is grown or marketed. The result clearly would be a renewal of the confusion that Congress desired to eradicate.[21]

---

[20] See, *e.g.*, *Currin* v. *Wallace*, 306 U.S. 1, 12; *Turner* v. *Maryland*, 107 U.S. 38, 57–58.

[21] The road will also be open for the re-creation of the chaotic conditions in the classification of all agricultural products that, since 1911, Congress has attempted to eliminate. See, *e.g.*, United States Warehouse Act, Sections 18, 19, 39 Stat.

5. Finally, it should be noted that, if any element of the Georgia tobacco industry is dissatisfied with the implementation of the federal Tobacco Inspection Act, it can have recourse to the Secretary, the agent to whom Congress has delegated the duty of implementing the Act with appropriate standards and regulations. If there be dissatisfaction with the standards as they now read, including the provisions that types of tobacco shall be differentiated not on the basis of geography but rather on the basis of the characteristics of the tobacco, or if there be dissatisfaction with the method of identification of type prescribed by the Secretary, a petition may be filed for the institution of a rule-making proceeding. 7 C.F.R. 1.27, 1.28; see Section 4 of the Administrative Procedure Act, 60 Stat. 239, 5 U.S.C. 1003(d). If, on the other hand, there is dissatisfaction with the way that federal inspectors are carrying out or failing to carry out their obligation under the Secretary's standards and regulations, an appeal of the disputed classification can be made to the inspector's supervisor and from there to the Director of the Tobacco Division, Agricultural Marketing Service, Department of Agriculture. 7 C.F.R. 29.90, 29.91.

488, 489, as amended, 7 U.S.C. 257, 260; United States Grain Standards Act, Sections 2, 4, 39 Stat. 482, 483, as amended, 7 U.S.C. 74, 76; Export Apples and Pears Act, Section 1, 48 Stat. 123, 7 U.S.C. 581; Export Grapes and Plums Act, Section 1, 74 Stat. 734, 7 U.S.C. (Supp. II) 591; Act of August 28, 1954, Section 401(e), 68 Stat. 907, as amended, 7 U.S.C. 608e-1; Cotton Futures Act, 39 Stat. 476, as codified, 26 U.S.C. 4863(a)(7). Cf. *Currin v. Wallace*, 306 U.S. 1, 12.

The Secretary of Agriculture has authorized us to advise the Court that, though the Secretary has from time to time revised his standards and regulations in accordance with experience and changing conditions,[23] no one has petitioned for a rule-making proceeding concerning the matters on which Georgia has legislated and no one has exercised the right to appeal to the Director of the Tobacco Division from an inspector's classification of flue-cured tobacco.

CONCLUSION

For these reasons, it is submitted that the judgment below should be affirmed.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
WILLIAM H. ORRICK, JR.,
Assistant Attorney General.
ALAN S. ROSENTHAL,
SHERMAN L. COHN,
Attorneys.

OCTOBER 1961.

---

[23] *E.g.*, 12 Fed. Reg. 8041; 17 Fed. Reg. 6610; 22 Fed. Reg. 3747; 23 Fed. Reg. 2668; 24 Fed. Reg. 3978.

APPENDIX

The Federal Tobacco Inspection Act of August 23, 1935, 49 Stat. 731, 7 U.S.C. 511, provides as follows (as it appears in the United States Code):

§ 511. *Definitions.*

When used in this chapter—

(a) "Person" includes partnerships, associations, and corporations, as well as individuals.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) "Inspector" means any person employed, licensed, or authorized by the Secretary to determine and certify the type, grade, condition, or other characteristics of tobacco.

(d) "Sampler" means any person, employed, licensed, or authorized by the Secretary to select, tag, and seal official samples of tobacco.

(e) "Weigher" means any person employed, licensed, or authorized by the Secretary to weigh and certify the weight of tobacco.

(f) "Tobacco" means tobacco in its unmanufactured form.

(g) "Auction market" means a market or place to which tobacco is delivered by the producers thereof, or their agents, for sale at auction through a warehouseman or commission merchant.

(h) Words in the singular form shall be deemed to import the plural form when necessary.

(i) "Commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession,

or the District of Columbia. For the purposes of this chapter (but not in any wise limiting the foregoing definition) a transaction in respect to tobacco shall be considered to be in commerce if such tobacco is part of that current of commerce usual in the tobacco industry whereby tobacco or products manufactured therefrom are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Tobacco normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possessions of the United States, and foreign nations. (Aug. 23, 1935, ch. 623, § 1, 49 Stat. 731.)

§ 511a. *Declaration of purpose.*—Transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; such fluctuations constitute

a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein. (Aug. 23, 1935, ch. 623, § 2, 49 Stat. 731.)

§ 511b. *Official standards for classification; tentative standards; modification.*—The Secretary is authorized to investigate the sorting, handling, conditioning, inspection, and marketing of tobacco from time to time, and to establish standards for tobacco by which its type, grade, size, condition, or other characteristics may be determined, which standards shall be the official standards of the United States, and shall become effective immediately or upon a date specified by the Secretary: *Provided,* That the Secretary may issue tentative standards for tobacco prior to the establishment of official standards therefor, and he may modify any standards established under authority of this chapter whenever, in his judgment, such action is advisable. (Aug. 23, 1935, ch. 623, § 3, 49 Stat. 732.)

§ 511c. *Same; demonstration; samples; cost.*—The Secretary is authorized to demonstrate the official standards; to prepare and distribute, upon request, samples, illustrations, or sets thereof; and to make reasonable charges therefor: *Provided,* That in no event shall charges be in excess of the cost of said samples, illustrations, and services so rendered. (Aug. 23, 1935, ch. 623, § 4, 49 Stat. 732.)

§ 511d. *Designation of markets; manner.*—The Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during

the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this chapter, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: *Provided,* That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this chapter shall be construed to prevent transactions in tobacco at markets not designated by

the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorise the Secretary to close any market. (Aug. 23, 1935, ch. 623, § 5, 49 Stat. 732.)

§ 511e. *Sampling and weighing; cost; disposition of moneys received; expenses; purpose.*—The Secretary, independently or in cooperation with other branches of the Government, State agencies, or persons, whether operating in one or more jurisdictions, is authorised to employ and/or license competent persons as samplers to take official samples of tobacco, or as weighers to weigh and certify the weight of tobacco, or as inspectors of tobacco to determine and certify, upon the request of the owner or other financially interested person, the type, grade, weight, condition, and/or such other facts as the Secretary may deem necessary.

The Secretary is authorized to fix and collect such fees or charges in the administration of this section as he may deem reasonable, and the moneys collected, except as provided in this section, shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts. Fees or charges collected under an agreement with a State, municipality, or person, or by an individual licensed to inspect or weigh or sample tobacco under this chapter, may be disposed of in accordance with the terms of such agreement or license. Charges for expenses for travel and subsistence incurred by inspectors or weighers or samplers employed by the Secretary when required to be paid by the applicant for service, may be credited to the appropriation, or any other funds authorised in this chapter from which they were paid.

This section is intended merely to provide for the furnishing of services upon request of the owner or other person financially inter-

ested in tobacco to be sampled, inspected, or weighed and shall not be construed otherwise. (Aug. 23, 1935, ch. 623, § 6, 49 Stat. 732.)

§ 511f. *Reinspection and appeal inspection; certificate as evidence.*—The Secretary shall provide for such reinspection or appeal inspection of tobacco as he may deem necessary for the confirmation or reversal of certificates issued under this chapter. Each inspection certificate issued under this chapter, unless invalidated or superseded in accordance with the regulations of the Secretary, shall be received in all courts and by all officers and employees of the United States as prima facie evidence of the truth of the statements therein contained. (Aug. 23, 1935, ch. 623, § 7, 49 Stat. 733.)

§ 511g. *Placing of grade on warehouse tickets, etc.; form.*—Warehousemen shall provide space on warehouse tickets or other tags or labels used by them for showing the grade of the lot covered thereby as determined by an authorized tobacco inspector under this chapter. The Secretary may prescribe, by regulation, the form in which such certification of grade shall be shown, and may require that a copy of such warehouse ticket, tag, or label shall be furnished to the Secretary. (Aug. 23, 1935, ch. 623, § 8, 49 Stat. 733.)

§ 511h. *Publication of information relating to tobacco.*—The Secretary is authorized to collect, publish, and distribute, by telegraph, mail, or otherwise without cost to the grower, timely information on the market supply and demand, location, disposition, quality, condition, and market prices for tobacco. (Aug. 23, 1935, ch. 623, § 9, 49 Stat. 733.)

§ 511i. *Offenses.*—It shall be unlawful—

(a) For any person to use the words "United States", "Government", or "Federal", or any abbreviation thereof, in, or in connection with, any statement relating to the

grade of tobacco when such grade is not, in fact, one of the grades for tobacco according to the standards of the United States.

(b) For any person falsely to make, issue, alter, forge, or counterfeit, or aid, cause, procure, or assist in or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate, stamp, tag, seal, label, or other writing purporting to be issued or authorized under this chapter.

(c) For any person, not an authorized inspector under this chapter, to issue a certificate or report stating the type, grade, size, or condition of any lot of tobacco to be in accordance with the standards of the United States therefor which is of such color, size, arrangement, or wording as to be mistaken for a certificate issued under this chapter, unless such certificate states in prominent letters in its heading that it is not issued under authority of the United States.

(d) For any person employed, designated, or licensed by the Secretary as an inspector, sampler, or weigher of tobacco under this chapter knowingly to inspect, sample, or weigh improperly, or to issue any false certificate under this chapter, or to accept money or other consideration, directly or indirectly, for any neglect or improper performance of duty as an inspector, sampler, or weigher.

(e) For any person improperly to influence or to attempt improperly to influence or forcibly to assault, resist, impede, or interfere with any inspector, sampler, weigher, or other person employed, designated, or licensed by the Secretary in the execution of his duties under this chapter: *Provided, however,* That nothing herein shall operate to prevent the owner of tobacco from appealing or protesting, in accordance with regulations of the Secretary, the grade certified for his tobacco.

(f) For any person falsely to represent or otherwise indicate that he is authorized by the Secretary to inspect, sample, or weigh tobacco under this chapter.

(g) For any person to substitute, or attempt to substitute, following inspection or sampling or weighing under this chapter, other tobacco for tobacco actually inspected or sampled or weighed, or in the case of tobacco inspected in auction warehouses for any person not so authorized by the Secretary to remove any certificate of grade from any lot of tobacco prior to the sale of such lot.

(h) For any person falsely to represent that tobacco has been inspected, sampled, or weighed under this chapter; or knowingly to have made any false representation concerning tobacco inspected under this chapter; or knowing that tobacco is to be offered for inspection or sampling under this chapter to load, pack, or arrange such tobacco in such manner as knowingly to conceal foreign matter or tobacco of inferior grade, quality, or condition; or for any person knowing that tobacco has been so loaded, packed, or arranged, to offer it for inspection or sampling without disclosing such knowledge to the inspector or sampler before inspection or sampling.

(i) For any person willfully to alter an official sample of tobacco by removing or plucking leaves or otherwise, or for any person knowing that an official sample of tobacco has been so altered, thereafter to represent such sample as an official sample. (Aug. 23, 1935, ch. 623 § 10, 49 Stat. 733.)

§ 511j. *Same; publication of facts.*—The Secretary is authorized to publish the facts regarding any violation of this chapter. (Aug. 23, 1935, ch. 623, § 11, 49 Stat. 734.)

§ 511k. *Same, penalty.*—Any person violating any provisions of sections 511d and 511i of this title shall be guilty of a misdemeanor and upon

conviction thereof shall be fined not more than $1,000, or imprisoned not more than one year, or both. (Aug. 23, 1935, ch. 623, § 12, 49 Stat. 734.)

§ 5111. *Act of agent as that of principal.*—In construing and enforcing the provisions of this chapter, the act, omission, or failure of any agent, officer, or other person acting for or employed by an association, partnership, corporation, or firm, within the scope of his employment or office, shall be deemed to be the act, omission, or failure of the association, partnership, corporation, or firm, as well as that of the person. (Aug. 23, 1935, ch. 623, § 13, 49 Stat. 734.)

§ 511m. *Regulation; hearings; employees; expenditures; appropriation.*—The Secretary is authorized to make such rules and regulations and hold such hearings as he may deem necessary to effectuate the purposes of this chapter and may cooperate with any other Department or agency of the Government; any State, territory, district, or possession, or department, agency, or political subdivision thereof; purchasing and consuming organizations, boards of trade, chambers of commerce, or other associations of business men or trade organizations; or any person, whether operating in one or more jurisdictions in carrying on the work herein authorized; and he shall have the power to appoint, suspend, remove, and fix the compensation of all officers, employees, and licensees not in conflict with existing law. The Secretary is authorized to make such expenditures for rent outside of the District of Columbia, printing, binding, telegrams, telephones, books of reference, publications, furniture, stationery, office and laboratory equipment, travel, tobacco for use in preparing and demonstrating standards, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this chapter in the District

of Columbia and elsewhere, and as may be appropriated for by Congress; and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for administering this chapter. (Aug. 23, 1935, ch. 623, § 14, 49 Stat. 734.

§ 511n. *Hearings; examination of witnesses; refusal to testify or produce evidence.*—In carrying on the work authorized in this chapter the Secretary, or any officer or employee designated by him for such purpose, shall have power to hold hearings, administer oaths, sign and issue subpenas, examine witnesses, and require the production of books, records, accounts, memoranda, and papers. Upon refusal by any person to appear, testify, or produce books, records, accounts, memoranda, and papers in response to a subpena, the proper United States district court shall have power to compel obedience thereto. (Aug. 23, 1935, ch. 623, § 15, 49 Stat. 735.)

§ 511o. *Separability of provisions.*—If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons and circumstances shall not be affected thereby. (Aug. 23, 1935, ch. 623, § 16, 49 Stat. 735.)

§ 511p. *Delegation of Duties by Secretary of Agriculture.*—Any duties devolving upon the Secretary of Agriculture by virtue of the provisions of this chapter may with like force and effect be executed by such officer or officers, agent or agents, of the Department of Agriculture as the Secretary may designate for the purpose. (Aug. 23, 1935, ch. 623, § 17, 49 Stat. 735.)

§ 511q. *Short title.*—This chapter may be cited as "The Tobacco Inspection Act." (Aug. 23, 1935, ch. 623, § 18, 49 Stat. 735.)

The Georgia Tobacco Identification Act of March 7, 1960, 1960 Ga. Law 214, provides as follows:

An Act to regulate the sale of flue-cured leaf tobacco in this State so as to enable producers to have an adequate time to properly cure, prepare, and market flue-cured leaf tobacco; to provide a means of identifying all types of flue-cured leaf tobacco sold in this State and a procedure connected therewith; to provide for the licensing and bonding of operators of flue-cured leaf tobacco and a procedure connected therewith and a license fee; to provide for the bonding of operators of tobacco warehouses, the amount thereof, and the conditions of such bond; to provide the maximum charges and expenses of handling and selling leaf tobacco in this State; to provide that statements of charges shall be submitted by the warehouseman to the seller of tobacco; to provide for records to be kept by licensee to show the origin and amount of tobacco sold by him and a procedure connected therewith; to provide for the duties of the Commissioner of Agriculture in compiling statistics relative to the sale of leaf tobacco; to create and advisory board and to provide its composition, the duties of the members thereof and their compensation; to provide for the setting of the opening date of the tobacco marketing season in this State and to provide a procedure connected therewith; to provide a minimum tobacco marketing season in this State and a procedure for the ceasing of operations of a warehouse prior to the expiration of the maximum selling season; to provide the maximum rate of sales of leaf tobacco by warehousemen; to provide a means of identification of flue-cured leaf tobacco as to types sold in this State and a procedure connected therewith; to provide a penalty for violating the provisions of section 13 by a licensee; to provide for identification

tags for use in marketing tobacco in this state; to prohibit the mixing of type 14 tobacco with any other type of tobacco and to prescribe a means for the sale of such mixed tobacco; to provide for the registration of purchasers of tobacco for resale and a procedure connected therewith; to provide for the duties of Commissioner of Agriculture in conjunction with the administration and enforcement of this Act; to provide for certification by weighers for the weighing of tobacco at each warehouse and a procedure connected therewith; to provide for the revocation or suspension of any license or registration issued hereunder after notice and hearing and a procedure connected therewith; to provide for injunctions and a procedure connected therewith; to provide for rules and regulations; to provide for judicial review of administrative determinations or decisions and a procedure connected therewith; to provide for appeals and a procedure connected therewith; to provide for the impounding of records and commodities during investigation for violations of this Act and rules and regulations promulgated hereunder; to repeal Code Chapter 111-2 relating to statistics on leaf tobacco; to repeal an Act approved March 28, 1935 (Ga. L. 1935, p. 476), fixing a maximum charge for selling and handling leaf tobacco; to repeal an Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the sale of flue-cured leaf tobacco; to define terms; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

INTENT

SECTION 1. It is the intent and purpose of this Act to enable producers to have sufficient time to properly cure, prepare and have an adequate time to market their flue-cured tobacco

in an orderly manner and to provide a means of identification of types of flue-cured leaf tobacco sold in this State to the end that all purchasers thereof may be assured of the positive identification of tobacco sold in this State. It is found by the General Assembly that it is essential that the provisions provided in this Act are necessary to the proper marketing and identification of flue-cured leaf tobacco. Type 14 flue-cured leaf tobacco as used herein shall mean that flue-cured leaf tobacco grown in the traditional loose-leaf area which consists of the State of Georgia, Florida, and Alabama.

AUCTION LICENSES

SECTION 2. No person real or corporate shall operate, hold or conduct an auction sale for the sale of flue-cured leaf tobacco within this State without having first obtained a license for the year in which the sale is made from the Commissioner. The license shall be for the calendar year and the license fee shall be $10.00 per each calendar year and shall expire on December 31 of each year and be subject to renewal under such rules and regulations as the Commissioner shall prescribe.

SAME, BONDS

SECTION 3. As a prerequisite to the issuance of a license under the provisions of this Act, each applicant shall produce evidence to the Commissioner that he has in force for the calendar year for which license is sought a bond issued by a corporate entity authorized to do business in this State in the penal sum of $10,000.00. Such information shall show that the bond is in full force and effect and shall remain of full force and effect during the calendar year for which the license is sought. The bond shall be conditioned upon the licensee performing all the duties imposed upon him

by law and the accounting for the proceeds of all flue-cured leaf tobacco received by him for sale and sold by him.

CHARGES BY AUCTION WAREHOUSEMEN

SECTION 4. The maximum charges and expenses of handling and selling leaf tobacco by warehousemen licensed under this Act shall not exceed the following schedule, to-wit:

For auction fees, 15¢ on all piles or sheets of one hundred (100) pounds or less and twenty-five cents (25¢) on all piles or sheets over one hundred (100) pounds. For weighing and handling, ten cents (10¢) per pile or sheet for all piles or sheets of one hundred (100) pounds or less and ten cents (10¢) for each additional one hundred (100) pounds. For commissions on the gross sales of leaf tobacco in said warehouses not to exceed two and one-half per cent (2½%) of said gross sales.

SAME, STATEMENTS

SECTION 5. The licensee of each and every warehouse shall render to each seller of tobacco of his warehouse an itemized statement plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commission on each sale.

WAREHOUSE RECORDS, REPORTS, ETC.

SECTION 6. Each licensee shall keep a correct daily account of the number of pounds of leaf tobacco sold upon the floor of his warehouse. On or before Monday of each week, the licensee shall make a statement under oath of all of the tobacco sold upon the floor of his warehouse during the preceding week and shall transmit each report to the Commissioner. The report shall be so arranged and classified as to show

the number of pounds of tobacco sold for producers, the number of pounds sold for dealers, and the number of pounds resold by the licensee for his own account or for the account of some other warehouse or licensee. In addition thereto each licensee shall indicate the number of pounds of type 14 flue-cured leaf tobacco sold upon the floor of his warehouse for producers thereof and the number of pounds of type 14 flue-curred leaf tobacco sold by persons other than producers upon the floor of his warehouse. The licensee shall report the total number of pounds of other than type 14 flue-curred leaf tobacco sold for producers and persons other than producers. In addition thereto, each licensee shall make such additional reports as shall be prescribed by the Commissioner.

RECORDS BY COMMISSIONER OF AGRICULTURE

SECTION 7. The Commissioner shall cause to be kept and compiled the information submitted to him as to the sales of tobacco in this State. He shall cause such records to be kept in a manner so as to show the number of pounds of type 14 tobacco sold by each warehouse as well as the number of pounds of other than type 14 tobacco sold by each warehouse. He shall cause such records to be kept in a manner so as to show separately the number of pounds of type 14 tobacco and other types sold by producers and the number of pounds of each type of tobacco resold. The Commissioner of Agriculture is authorized to cause such information to be published in a manner that he deems most beneficial.

ADVISORY BOARD

SECTION 8. To aid in the administration of this Act, there is hereby created an Advisory Board to be composed of nine (9) members. Three (3) members are to be members of the House of Representatives to be appointed by

the Speaker of the House, and two (2) members are to be members of the Senate to be appointed by the President of the Senate. The members of the General Assembly shall be appointed from those members who are tobacco producers or in the absence of such producers in the General Assembly such members may be appointed from the members of the General Assembly who represent the flue-cured leaf tobacco producing counties and districts of this State. One (1) member shall be the Commissioner of Agriculture, ex officio, or his representative, who shall be Chairman of the Board. One (1) member shall be a flue-cured leaf tobacco producer to be appointed by the Commissioner of Agriculture. One (1) member shall be the President of the Georgia Farm Bureau Federation, or his representative. One (1) member shall be a member of the Georgia Flue-Cured Tobacco Warehousemen's Association to be appointed by the President of that Association. The appointive members shall serve at the pleasure of the appointing officer. The members of the General Assembly shall receive the per diem and expense allowance provided for committee work of the General Assembly and such sums shall be paid from the funds appropriated for the operation of the General Assembly. The other appointive members of the Board shall be compensated in the amount of $15.00 per day for each day in attendance of the duties of the Board and shall be reimbursed for the necessary expenses incurred in the performance of their duties from the funds of the Department of Agriculture. The Commissioner shall be reimbursed for his expenses incurred in the performance of his duties. The members of the Board shall not receive the per diem provided herein for more than seven (7) days per year.

SAME, MEETINGS, ETC.

SECTION 9. The Board shall meet in June of each year, or upon call of the Chairman, to survey the condition of the tobacco crop and recommend an opening date of the marketing season. The Chairman shall determine the time and place of the meeting. The Board shall recommend to the Commissioner a date for the opening of the tobacco marketing season. If the Commissioner approves the opening date or if he deems it necessary for any other reason, he shall cause one or more members of the Board to attend the meeting of the Board of Governors of the Bright Belt Warehouse Association or its successors to make known the recommendation as to the opening of the marketing season in Georgia. If the Board of Governors of the Bright Belt Warehouse Association shall disapprove the recommended date or shall indicate an opening date for the tobacco marketing season in Georgia that is not in accordance with nor agreeable to the Tobacco Advisory Board or the Commissioner, the Commissioner shall determine the opening date of the tobacco marketing season in this State. If any licensee shall hold a sale prior to the date determined by the Commissioner, the license of the licensee shall stand revoked and shall not be reinstated or reissued in the calendar year of the revocation. The revocation provided herein shall be in addition to the other penalties provided for the violation of this Act. It is the intent and purpose of this section to provide a procedure for the fixing of the opening date of the tobacco marketing season and to place the final authority to fix said date in the Commissioner of Agriculture.

MARKETING SEASON

SECTION 10. The flue-cured leaf tobacco marketing season shall continue for a minimum of

twenty-seven (27) selling days after the opening date. The operating day of each flue-cured leaf tobacco warehouse shall not exceed five (5) actual selling hours and operating week of each such warehouse shall be limited to five (5) actual selling days, provided that no sale shall be held on Saturday or Sunday.

SAME

SECTION 11. If any warehouse has two (2) successive selling days during which the actual selling time is not more than one (1) hour each day, then that particular warehouse shall be permitted to cease its operations but not before two (2) days have passed after the days that the actual selling time has not exceeded one (1) hour per day. The Commissioner may authorize a warehouse to cease operations at an earlier date than that provided herein when the Commissioner determines that the ceasing of operations by the warehouse is in the best interest of the marketing of tobacco.

MAXIMUM SALES

SECTION 12. The maximum rate of sales at any such warehouse shall not exceed four hundred fifty (450) baskets during any one (1) hour nor shall the rate of sales during any one (1) day or week exceed four hundred and fifty (450) baskets per hour.

TAGS FOR TYPE 14 TOBACCO

SECTION 13. (A) As an aid in providing positive identification of type 14 flue-cured leaf tobacco, it shall be the duty of each licensee to furnish white identification tags to identify type 14 tobacco. It shall be the duty of each licensee to cause such white identification tags to be placed upon each sheet of type 14 tobacco received in his warehouse for sale by requiring that producers, at the time of the receipt of

tobacco in the warehouse submit proof of the origin of the tobacco to be sold. No licensee shall receive from any producer any tobacco for sale unless the licensee receives proof in the form of marketing cards, or other identification measures issued by the United States Department of Agriculture so as to definitely establish the origin of the tobacco. The licensee shall cause to be placed upon each sheet of type 14 tobacco a white sheet ticket that shall remain upon the sheet of tobacco at all times after receipt in the warehouse until after the sale of the sheet of tobacco and shall cause such ticket to have a carbon copy of the same color that shall remain with the sheet of tobacco at all times subsequent to sale, as well as prior to the sale, that the tobacco remains in this State.

(B) Each licensee shall cause to be placed upon each sheet of other than type 14 tobacco received by him for sale, at the time of the receipt thereof, a colored identification tag of a color prescribed by the Commissioner that shall be attached to and shall remain in a conspicuous place at or near the top of the sheet of tobacco in such manner as to show to any person who desires to ascertain the type of tobacco offered for sale, or held for sale, that the tobacco is other than type 14. It shall be the duty of each licensee to ascertain at the time of the receipt of the tobacco to ascertain from producers or others the origin of the tobacco offered for receipt and to place the appropriate tag upon the tobacco so as to indicate the type.

(C) Each licensee receiving tobacco from persons other than producers for sale shall require that the origin of the tobacco be proven to his satisfaction so as to enable the licensee to properly identify the type of tobacco.

(D) Any licensee who shall indicate or permit to be indicated upon his premises any to-

bacco as type 14 when, in fact, such tobacco is not type 14 or any licensee who shall violate the provisions of this section shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment of not less than one year nor more than five years and shall be subject to a fine of not more than $5,000.00 or both such fine and imprisonment.

(E) It is the intent and purpose of this section to provide a means to positively identify type 14 tobacco and to require that types other than type 14 be identified and marketed in such manner as to indicate the type to any person seeking to ascertain the type of tobacco offered for sale in this State.

IDENTIFICATION TAGS

SECTION 14. It shall be the duty of each licensee to provide identification tags of the color prescribed by the Commissioner for the use in marketing tobacco in his warehouse. Each licensee shall submit proof to the Commissioner prior to the opening of the marketing season, at a time prescribed by the Commissioner, of each year of an adequate supply of the identification tags required for the operation of his warehouse during the subsequent marketing season. Identification tags shall be of the size, color, number of carbon copies, shape and provide for information as shall be prescribed by the Commissioner.

RESALES OF TOBACCO

SECTION 15. Any person who shall purchase tobacco at auction for resale shall cause the tobacco so purchased to retain its identity as to type. Any person who shall mix type 14 tobacco with any other type of tobacco and who shall offer such mixed tobacco for sale shall cause such tobacco to be marketed and identified as other than type 14 tobacco. It shall

be the duty of each purchaser for resale to retain the original identification ticket of each sheet of tobacco so purchased or a copy thereof and submit such sheets to the warehouse as a means of identification when the tobacco is offered for resale.

SAME, LICENSING

SECTION 16. It shall be unlawful for any person to purchase tobacco for resale without having first registered with the Commissioner of Agriculture. There shall be no fee for such registration and the Commissioner is authorized to revoke, suspend or cancel such registration after notice and hearing for any violation of this Act or any rule or registration promulgated hereunder.

INSPECTIONS

SECTION 17. The Commissioner, himself or through his agent, is authorized to inspect the premises of each licensee as often as he shall deem necessary. It shall be the duty of each licensee to cause to be kept records that shall be open to inspection by the Commissioner in such manner as to accurately show the origin and disposition of each type of flue-cured leaf tobacco.

CERTIFIED WEIGHERS

SECTION 18. It shall be the duty of each licensee to provide a certified public weigher for the weighing of tobacco upon his premises and it shall be unlawful for any person to weigh tobacco for sale who is not a certified public weigher.

ENFORCEMENT OF ACT

SECTION 19. It shall be the duty of the Commissioner to enforce the provisions of this Act and to utilize any employee of the Department of Agriculture in the performance of his duties

hereunder. The Commissioner is authorized to revoke or suspend any license or registration issued hereunder after notice and hearing before the Commissioner.

INJUNCTIONS

SECTION 20. In addition to the remedies provided herein and notwithstanding the existence of any other remedy of law and notwithstanding the pendency of any criminal prosecution, the Commissioner is authorized to apply to the Superior Court and such Court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction or an ex parte restraining order restraining or enjoining any person from violating or continuing to violate any of the provisions of this Act or for the failure or refusal to comply with the provisions of this Act or any rule or regulation promulgated hereunder. Such injunction shall be issued without bond.

RULES

SECTION 21. (a) Prior to adoption or change of any rules and regulations, the Commissioner shall promulgate the proposed promulgation or change and afford interested persons an opportunity to be heard and submit data and views orally or in writing.

(b) Any person with a real and substantial interest who is affected by a rule and regulation of the Commissioner who believes that the Commissioner in the promulgation or enforcement of such rule or regulation has exceeded the authority vested in him by the General Assembly under the Constitution of Georgia or United States shall have the right to petition the Commissioner for the repeal or rejection of such rule or regulation by pointing out in what respect and for what reasons he contends the rule to be unlawful or unconstitutional.

The Commissioner is required to consider every such petition and afford the petitioner an opportunity to be heard within thirty (30) days, and, after argument, the Commissioner shall determine the merits of the petition. If the Commissioner decides in whole or in part in favor of the petitioner, the Commissioner shall take corrective measures within thirty (30) days after the hearing to give the petitioner relief in every respect from any unlawful or unconstitutional rule or regulation. The foregoing is expressly made an administrative remedy and every person affected by any rule or regulation or any Act of the Commissioner is required to exhaust this remedy before taking any other steps.

(c) All hearings before the Commissioner shall be stenographically reported and shall be available to any interested party upon payment of the stenographic cost.

REVIEW

SECTION 22. (a) *Procedure.*—(1) Any person aggrieved by a final decision or determination in any matter in which a hearing is required or authorized by this Act or by the State or Federal Constitution is entitled to judicial review thereof, provided that the judicial review herein afforded shall be exclusive judicial remedy for review of such decision or determination.

(2) Proceedings for review shall be instituted by filing a petition in the superior court of the county in which the Commissioner resides, within thirty (30) days after service of the final decision or determination of the Commissioner. Copies of the peition shall be served upon the Commissioner and all other parties of record. The court in its discretion may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the Commissioner's decision;

but the Commission may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty (30) days after service of the petition, or within such further time as the court may allow, the Commissioner shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding; the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Commissioner, the court may order that the additional evidence be taken before the Commissioner upon such conditions as the court may deem proper. The Commissioner may modify his findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

(b) *Scope of review.*—(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the Commissioner, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(2) The court may affirm the decision of the Commissioner or remand the case for further

proceedings before the Commissioner; or it may reverse or modify the decision or compel action unlawfully withheld, if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the Commissioner or affected by other error of law; or

(c) made upon unlawful procedure; or

(d) unsupported by substantial evidence as weighed in view of the entire record as submitted; or

(e) arbitrary or capricious.

(c) *Appeals procedure.*—An aggrieved party may secure a review of any final judgment of the superior court under this Act by writ of error to the appropriate appellate court.

SUSPENSION OF LICENSES

SECTION 23. At such time as the Commissioner deems there has been a violation of this Act and the rules and regulations promulgated hereunder, he shall have the power and authority to suspend the license or registration pending investigation of such violation and until such time as the violation has been corrected to the satisfaction of the Commissioner. During the period of time of any investigation of a violation, the Commissioner shall have the power and authority to impound all books and records and to preserve and maintain evidence until investigation is completed. Provided, however, that the investigation shall be completed at the earliest practicable time.

CODE CHAPTER 111–2 REPEALED

SECTION 24. Code Chapter 111–2, relating to statistics on leaf tobacco is hereby repealed in its entirety.

1935 ACT REPEALED

SECTION 25. An Act approved March 28, 1935 (Ga. L. 1935, p. 476), fixing a maximum charge for selling and handling leaf tobacco is hereby repealed in its entirety.

1955 ACT REPEALED

SECTION 26. An Act approved March 9, 1955 (Ga. L. 1955, p. 589), relating to the sale of flue-cured leaf tobacco is hereby repealed in its entirety.

CRIMES

SECTION 27. Any person who shall violate any provision of this Act for which no specific punishment is provided herein shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

SECTION 28. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 7, 1960.

U. S. GOVERNMENT PRINTING OFFICE: 1961